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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 DeMARIAN A. CLEMONS,
10

11 *Petitioner,*

2:15-cv-01713-RCJ-CWH

12 vs.

13 ORDER
14

15 BRIAN WILLIAMS, et al.,
16

Respondent.

17 This is a habeas corpus proceeding under 28 U.S.C. § 2254. Petitioner has filed a motion for
18 leave to proceed *in forma pauperis* and a financial certificate (ECF Nos. 1 and 3) which show that he
19 is unable to pay the filing fee of \$5.00 required to initiate this action. Accordingly, petitioner's motion
20 for leave to proceed *in forma pauperis* shall be granted, and the clerk shall be ordered to file the
21 petition.

22 In reviewing the petition under Rule 4 of the Rules Governing Section 2254 Cases, the court
23 notes that it appears that all habeas claims in the petition are unexhausted. Petitioner therefore must
24 show cause in writing why the petition should not be dismissed without prejudice.

25 A state criminal defendant seeking to restrain the pending state proceedings via a federal writ
26 of habeas corpus first must exhaust his state court remedies before presenting his constitutional claims
27 to the federal courts. To satisfy the exhaustion requirement, the claim must have been fairly presented
28 to the state courts completely through to the highest court available, in this case the state supreme court.

1 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329 F.3d
 2 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific federal
 3 constitutional guarantee and must also state the facts that entitle the petitioner to relief on the federal
 4 constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir. 2000). That is, fair
 5 presentation requires that the petitioner present the state courts with both the operative facts and the
 6 federal legal theory upon which his claim is based. *E.g., Castillo v. McFadden*, 399 F.3d 993, 999 (9th
 7 Cir. 2005). The exhaustion requirement insures that the state courts, as a matter of federal-state comity,
 8 will have the first opportunity to pass upon and correct alleged violations of federal constitutional
 9 guarantees. *See, e.g., Coleman v. Thompson*, 501 U.S. 722, 731 (1991).

10 In the present case, petitioner indicates that, for each claim, he sought relief in the state district
 11 court, but that he did not appeal the result of that proceeding to the Nevada Supreme Court. ECF No.
 12 1-1, pp. 5, 8, and 11. If that is the case, the petition is entirely unexhausted as to any cognizable federal
 13 habeas claims. Petitioner must show cause why the petition should not be dismissed without prejudice
 14 for complete lack of exhaustion.

15 **IT THEREFORE IS ORDERED** that petitioner's motion for leave to proceed *in forma*
 16 *pauperis* (ECF No. 1 and 3) is GRANTED. The clerk shall **file** the habeas petitions submitted with the
 17 motion.

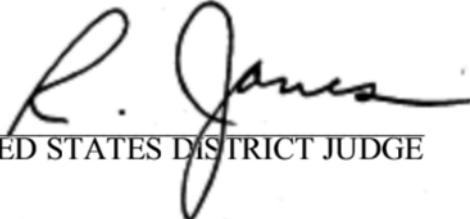
18 **IT IS FURTHER ORDERED** that, within **thirty (30) days** of entry of this order, petitioner
 19 shall SHOW CAUSE in writing why the petition should not be dismissed without prejudice for lack of
 20 exhaustion. If petitioner maintains that any claims in the petition have been exhausted, petitioner shall
 21 attach with his response copies of any and all papers that were accepted for filing in the state courts that
 22 he contends demonstrate that the claims are exhausted. All factual assertions must be specific and
 23 supported by competent evidence.

24 If petitioner does not timely and fully respond to this order, or does not show adequate cause as
 25 required, the entire petition will be dismissed without further advance notice.¹
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 28 ¹The court has not completed initial review herein as to other potential issues, and this order does not explicitly
 or implicitly hold that the petition otherwise is free of deficiencies.

1 **No extension of time will be granted to respond to this order except in the most compelling**
2 **of circumstances. Nothing in either this court's orders to date or the mere pendency of this action**
3 **in any manner restrains the state courts from proceeding in a pending prosecution.**

4 DATED: This 9th day of November, 2015.



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6 UNITED STATES DISTRICT JUDGE
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